1949. K File No. Village Panchayat II/49 (R)

Legal Dept.

B. BRANCH

Subject:— Rules under the Bombay

P27E Village Panchayat Act- 1933

File No. Village Panchayat II/49 (R)

Gen. 104 c.

309-B.

L.D. R.I No. 1904 dt. 9.2.49.

Submitted.

Please see H.M. L.G.D's note of 20-1-49 at page 2 and H.& L.D's note dated 2.2.49 at pages 5-6 ante.

2. It appears that H.M. L.G.D. desires that the question whether the Bombay Village Panchayats Election Rules, 1948, require any amendment to provide how the tendered notes should be disposed of.

3. The purpose for which tendered notes are kept separated is as stated by H.M.&L.G.D. to know how far the corrupt practices have taken place at an election. But the view taken by the Dept. that the Village Panchayats Election Rules do not require any amendment to cover the defect pointed out by the Controller at B. in para 1 of his order at page 3 is not correct.

4. Rule 26 of the Village Panchayats Election Rules relates to tendered notes. The corresponding rule for eletions to the Bombay Legislative Assembly is rule 33 of the Bombay Legislative Assembly Electoral (Elections and Election Petitions) Rules, 1936- the Village Panchayats Election Rule 26 does not provide the Returning Officer shall not count the tendered voting papers. This rule may therefore be amended and brought in line with the Assembly Election Rule 33. The Panchayats Rules 32 ~~and 33~~ and 33 which are on the lines of the Assembly Rules 30 and 31 are in order and do not require any amendment. Under section 9 of the Bombay Village Panchayats Act, 1933, the

question whether any elections invalid is to be decided by the Collector. Under these rules the tendered voting papers will be examined only under the orders of the Collector, when impersonation or other corrupt practice of irrglarity is alleged and validity of any election is challenged.

5. The Bombay Municipal Boroughs Act, 1925 and the Election Rules of the Ahmedabad Municipality given at page 253 of the Ahmedabad Municipality Code, Value 1, were looked up to verify the statement made by the Collector in para 2 of his order at page 3 but no provision as stated by him was found.

S.A.S.

Additional Secretary.

Rule 26 of the Bombay Village Panchayat Election Rules, 1948, relates to tendered voting papers. Under that rule the voter has to tender the voting paper to the Presiding Officer, and the Presiding Officer has to endorse theron the name of the voter and number in the voter's list, and to enclose the voting paper in a separate packet. From the provisions of rules 27 and 28, which next follow, it is apparent that the tendered votes are not to be counted. However, the position may be made clear by amending the rule by expressly providing that the tendered voting paper shall not be counted. Such express provision occurs in the corresponding rule 33 of the Bombay Legislative Assembly Electoral (Elections and Election Petitions) Rules, 1936. Under rule 32 the packets containing tendered voting papers are open to inspection under the orders of the Collector. Under rule 33 the Returning Officer is empowered to destroy the tendered voting papers with the previous sanction of the Collector on the expiry of one month from the date of the declaration of the result of the election. The purpose of keeping the tendered votes of a body

a person for the period mentioned in rule 33 is as stated by the Health & Local Government Department. Under section 9 of the Bombay Village Panchayats Act, 1933, the Collector is empowered to declare elections invalid under certain circumstances. In the event of any election being challenged on the ground of corrupt practice such tendered voting papers will be necessary for the Collector to determine if any one alleged corrupt practice has been committed in connection with the election.

Additional Secretary.

VGP.

7-6-56.

The rules under the Bombay Village Panchayats Act follow the scheme of the Bombay Legislative Assembly Rules. According to that scheme tendered votes a re not to be counted by the Returning Officers. Tendered votes presuppose personation i.e. a corrupt practice and involve the taking of evidence on both by the officer counting the votes, if such votes are to be taken into account. Until therefore an election is challenged by an election petition before a tribunal no question arises for taking such votes into a ccoint. The practice regarding tendered votes is not heriem uniform. There are cases in which on scrutiny the vote of the person personating is struck off and the vote of the person tendering is taken into account (See Parker's Election Agent and Returning Officer p. 327). Under section 9 of the Bombay Village Panchayats Act the Collector has to de cide whether an election is invalid. When the Collector scru-tinises the votes, he has power to go into the question of ten dered votes a nd to decide whether or not their votes should be taken into account. He has also power to inquire into the question of personation. The election rules under the Bombay Panchayats Act should be amended to make it clear that he can then take into a ccount tendered votes.

Sd. J.R.Dhurandhar.
19/2

xxxx

Additional Secretary to Government.

U.R. to H.& L.G.D.No.2053, dated the 21st February 1949.

VGP. 20-6-56.

NOTIFICATION.

bay Village
nchayats Act,
53.

No. .- The following draft of a notification which the Commissioners of Divisions propose to issue in exercise of the powers of the Provincial Government to make rules under clauses (m) and (s) of sub-section (1) of section 108 of the Bombay Village Panchayats Act, 1933 (Bom VI of 1933), delegated to them under Government Notifications in the General Department, No. S.174/1, dated the 3rd June 1941 and the 13th October 1943, is published as required by sub-section (2) of the said section 108 for the information of all persons likely to be affected thereby and notice is hereby given that the said draft will be taken into consideration by the Commissioner of the Division concerned on or after

1949.

2. Any objection or suggestion which may be received by the Commissioner from any person with respect to the said draft before the date aforesaid will be considered by the Commissioner concerned.

Draft Notification.

In exercise of the powers of the Provincial Government to make rules under clauses (m) and (s) of sub-section (1) of section 108 of the Bombay Village Panchayats Act, 1933 (Bom VI of 1933), delegated to them under Government Notifications in the General Department, No. S.174/1, dated the 3rd June 1941 and the 13th October 1943, the Commissioners of the Divisions are pleased to amend the Bombay Village Panchayats Taxes and Fees Rules, 1944, as follows, namely :-

*Part X

Cart-stand fees.

52. A Panchayats which decides to levy fee for the use of any cart-stand by carts passing throu h the panchayat limits, shall levy it at the rates specified in the Sqhedule annexed to this Part :

Provided that the Panchayat, which levies such a fee, shall make such sanitary arrangements and provide such suitable place for mid-lay and night rests, drinking water facilities for the ~~certain~~ Cartmen and the cattle, and a night watchman at the cart stand, as the Panchayat in consultation with the columns, deems necessary for the purpose.

53. The cart-stand shall be locate d such place as may be fixed by the Panchayat in consultation with the Collector.

54. The fee shall be paid by the person in charge of the cart to the person authorised by the Panchayat in that behalf at the cart-stand or at the Panchayat Office.

55. A receipt for payment of the fee shall be given to the following form:-

Counterfoil.

1. Name of the Village Panchayat,
2. Name of the Cartman
3. Category of the cart:-
   (i) drawn by 1 bullock
   (ii) drawn by 2 bullocks
   (iii) drawn by more than2 bullocks.
   Amount of the paid.

Signature of the Receiver.

Receipt.

1. Name of the Village Panchayat.
2. Name of the Cartman
3. Category of the cart
   (i) drawn by 1 bullock
   (ii) drawn by 2 bullocks
   (iii) drawn by more than 2 bullocks.
4. Amount of the fee paid.

Signature of the Receiver.

56. No fee under this Part shallbe levied unless it has been approved by the District Local Board and sanctioned by the Provincial Government.

SCHEDULE.

(Rule 52)
(Rate of cart-stand fee).

⊗ 1. Cart drawn by one or two Bullocks ... Annas 2
2. " " " more than " " ... " 4.

Commence N.D.
" C.S.
" S.S.

Legal Department.

A requisite draft notification is sent herewith.

2. Under section 39(2) (vii) of the Bombay Village Panchayats Act, 1933, a panchayat is competent to levy, with the approval of the District Local Board and sanction of the Provincial Government, any tax whih the Provincial Legislature has power to impose in the Province. The proposed cart-stand tax is not covered by entry 48A in List II in the Seventh Schedule to the Government of India Act, 1935, or any other entry which empowers the Provincial Legislature to impose a tax. Under section 26(1) (h) of the Act, it is one of the duties of a panchayats to make reasonable provision for control of cart-stands. The intention appears to be to levy an impost on the carts passing throught the panchayat limits and using the cart-stand, in return for some services rendered by the Panchayats Such impost could be justified as fees under entry 54 reas with entry 13 in List II. The draft rules have been revised accordingly.

3. As the draft rules are obvbously intended to apply to all village panchayats which will decide to levy such fees for the use of cart-stands, they may form part of the Bombay Village Panchayats Taxes and Fees Rules 1944. As required by section 39(2)(vii), a provision has been made in new rule 56 on the lines of existing rule 51 that the proposed fee shall not be levied without the approval of the District Local Board and sanction of the Provincial Government.

S.D. J.R.D.

Additional Secretary to Government.

U.R. to H.& L.G.D. No. 3041. dated the 18th March 1949.

VGP.

7-6-56.

NOTIFICATION.

Health and Local Government Department.

Bombay Castle, 1949.

Bombay Village Panchayats Act, 1933.

No. S. 174(3)-C.- The following draft of a notification which it is proposed to issue under clause (c) of sub-section(1) of section 108 of the Bombay Village Panchayats Act, 1933 (Bom VI of 1933), is published as required by sub-section (2) of the said section 108 for the information of all persons likely to be affected thereby and notice is hereby given that the said draft will be taken into consideration by the Government of Bombay on or after the *

1949.

2. Any objections or suggestions which may be received by the Secretary to the Government of Bombay, Health and Local Government of Bombay from any person with respect to the said draft on or before the date aforesaid will be considered by Government.

Draft notification.

In exercise of the powers conferredby clause(c) of sub-section (1) of section 108 of the Bombay Village Panchayats Act, 1933 (Bom.VI of 1933), the Government of Bombay is pleased to amend the Bombay Village Panchayats Election Rules 1948, as follows, namely :-

In the said rules,-

(1) in rule 26 after the words"such voting papers" the words "shall not be counted by the Returning Officer and shall be inserted;

(2) after rule 32 the following new rule shall be inserted, namely:-

"32A. Scrutiny of tendered voting papers. For the purpose of determining whether the election of any member is invalid, the Collector may take into account the tendered voting papers received at the election.

By order of the Governor of Bombay,

Under Secretary to Government.

VGP.
7.6.56.

NOTIFICATION.

Health and Local Government Department,

Bombay Castle, May 1949,

Bombay Village Panchayats Act, 1933.

No. S.174(3).- The following draft of a notification which it is proposed to issue under clause (a) of sub-section (1) of section 108 of the Bombay Village Panchayats Act, 1933 (Bom. VI of 1933), is published as required by sub-section (2) of the said section 108, for the information of all persons likely to be affected thereby, and notice is hereby given that the said draft will be taken into consideration by the Governmentof Bombay on or after the 5th June 1949.

2. Any objections or suggestions which may be received by the Secretary to Government Health and Local Government Department, from any person with respect to the said draft before the aforesaid date will be considered by Government:-

Draft Notification

No. .- In exercise of the powers conferred by clause (a) of sub-section (1) of section 108 of the Bombay Village Panchayats Act, 1933 (Bom VI of 1933) the Government of Bombay is pleased to amend the rules published in Government Notificatio, General Department, No. 174/3, dated the 7th June 1940, as follows namely :-

In the said rules,-

(1) for rules 2 and 3 the following new rules shall be substituted, namely :-

"2 (1) If the local area comprises a revenue village having a population of less than 1,000 or at least 50 adult resident s thereof apply in writing for the establishment of a panchayat. The Collector shall submit to Government a statement in Form A hereto annexed.

(ii) If the local area comprises a revenue village having a population of less than 1,000 and-

3. In the case of a local area comprising a group

of revenue villages or hamlets forming part of a revenue village the Collector shall first ascertain (i) whether the majority of the residents of such villagers or hamlets agree to the said villages or hamlets being grouped together for being declared a village, or (ii) whether village panchayats have already been established in such villages or hamlets or groups thereof and are working satisfactorily. If the Collector is satisfied that (i) such majority agree to the establishment of a panchayat for such group of villages or hamlets, or (ii) that panchayats have been established in such villages or hamlets and are working satisfactorily, he shall submit to Government a statement in Form B hereto annexed."

By order of the Governor of Bombay.

Secretary to Government.

VGP.

7-6-56.

Legal Department.

The requisite draft Notification is sent herewith.

2. Revised draft rule 3 suggested by Secretary, Health and Local Government Department, will not be workable in practice. If for example the proposal is to group villages A.B.C.& D. and if the majority in A agree to join with B, but the majority in B are in favour of joining with village C and the majority in village C are agreeable to join with village D, complications will arise and it will not be possible to arrive at a decision. The better course will be to ascertain the views of the majority of the residents of all such villages. The revised draft rule 3 provides accordingly.

S.D. J.R.Dhurandhar.
Sve. 26/5.

Additional Secretary to Government.

U.H. to H.& L.G.D. No. 5871, dated the 26th May 1949.

VOP.

7-6-5[illegible]

Notification.

Health and Local Government Department.

Bombay Castle, May 1949.

Bombay Village Panchayats Act, 1933.

No. S.174(8).- The following draft of a notification which it is proposed to issue under clause(a) of sub-section (1) of section 108 of the Bombay Village Panchayat Act, 1933 (Bom VI of 1933), is published as required by sub-section (2) of the said section 108, for the information of all persons likely to be affected thereby, and notice is hereby given that the said draft will be taken into consideration by the Government of Bombay on or after the 5th June 1949.

2. Any objections or suggestions which may be received by the Secretary to Government Health and Local Government Department, from any person with respect to the said draft before the aforesaid date will be considered by Government :-

Draft Notification.

No. - In exercise of the powers conferred by clause (a) of sub-section (1) of section 108 of the Bombay Village Panchayats Act, 1933 (Bom VI of 1833), the Government of Bombay is pleased to amend the rules published in Government Notification, General Department, No. S.174/8, dated the 7th June 1940, as follows, namely:

In the said rules,-

(1) for rules 2 and 3 the following new rules shall be substituted, namely:-

"2 (1)If the local area comprises a revenue village having a population of not less

and at least 50 adult residents thereof apply in writing for the establishment of a panchayat,

the Collector shall submit to Government a statement in Form A hereto annexed.

3. In the case of a local area comprising a group of revenue villages or hamlets forming part of a revenue village, the Collector shall first ascertain (i) whether the majority of the residents of each of the villages or hamlets agrees to the said villages or hamlets being grouped together for being declared a village, or (ii) whether village panchayats have already been established in such villages or hamlets or groups thereof and are working satisfactorily If the Collector is satisfied that(i) such majority agrees to the establishment of a panchayat for such group of villages or hamlets, or (ii) that panchayats have been established in such villages or hamlet and are working satisfactorily, he shall submit to Government a Statement in Form B hereto annexed."

(2) in Form A, the word "Commissioner" shall be deleted;

(3) in Form B,-

(a) Column 6 shall be deleted;

(b) Column 7 shall be renumbered as Column 6; and

(c) the word "Commissioner" shall be deleted.

By order of the Governor of Bombay.

Secretary to Government.

VGP.

7-6-56.

Legal Department.

As pointed out in this Department U.R. No. 5871 dated 26th May 1949, revised rule 3 as proposed by the Secretary, H.& L.G.D. at page 9 ante will cause practical difficulties. If ,however, the H&L.G.D. is satisfied th that no such difficulties are likely to arise, the rule may be revised as proposed by Secretary, H.& L.G.D. The expression "large majority" is however, vague, The word "large" has therefore been deleted. A revised draft notification incorporating new rule 3 and the other amendments proposed in Forms A and B is sent herewith.

S.D. J.R. Dhurandhar.
31/5

O.C.

Additional Secretary to Government.

U.R. to H.& L.G.D. No. 6096, dated the 31st May 1949.

VGP.

7-6-56.

Legal Department.

A revised draft notification is sent herewith.

S.D. J.R. Dhurandhar.

21/7.

o.c.

Additional Secretary to Government.

U.R. to H.&.L.G.D.No. 8274, dated the 22nd July 19

VGP.

7-6-56.

NOTIFICATION.

Health and Local Government Department.

Bombay Castle, July 1949.

Bombay Village Panchayats Act, 1933.

No. S.174(3).- The following draft of a notification which it is proposd to issue under clause (c) of sub-section (1) section 108 of the Bombay Village Panchayats Act, 1933, (Bom VIof 1933)m is published as required by sub-section (2) of the said section 108 for the information of all persons likely to be affected thereby and notice is hereby given that the said draft will be taken into consideration by the Government of Bombay on or after the

* 1949.

2. Any objections or suggestions which may be received by the Secretary to the Government of Bombay, Health and Local Government Department, from any person with respect to the said draft on or before the date aforesaid will be considered by Government.

Draft Notification.

In exercise of the powers conferred by clause (c) of sub-section (1) of section 103 of the Bombay Village Panchayats Amen-Act, 1933, (Bom VI of 1933) the Government of Bombay is pleased to amend the Bombay Village Panchayats Election Rules 1948, as follows namely :-

For rule 34 of the said rules the following shall be substituted, namely :-

"34. Multiple Elections.- Any person who is elected to more than one seat shall, by notice in writing signed by him and delivered to the Returning Officer within

seven days from the date of publicationxxxxxxxxx of the result of the election or, if such publication has been made on different dates, within seven days from the latest of such dates, resign all but one of the seats. On such resignation the election shall, for every other seat to which such person was elected be void and the result of the election for the said seats shall be determined, as if no votes xxxxxx had been recorded in his favour. In default of such resignation the election for all the seats to which such person was elected shall be void and the result of the election for the said seats shall be determined as if no votes had been recorded in his favour.

By order of the Governor of Bombay.

Under Secretary to Government.

VGP.

7-6-56.

Legal Department.

Submitted with reference to the H.&.L.D. Office note at p. 25 ante.

2. These pps. deal with a proposal to frame rules for the levy of cart-stand tax by Village Panchayats under the Bombay Village Panchayats Act, 1933.. The H.&.L.G.D. had forwarded a set of draft rules which were referred to this Department in the past. L.D. had furnished a set of revised draft rules under this Office U.R. No. 3041 dated 18-3-49 (at p.slip A 7 ante) and has pointed out that the proposed cart-stand tax would be ultra vires if not levied in the form of a fee under Section 89(2) (vii) of the Bombay Village Panchayats Act, 1933. The papers are now referred back to L.D. and the questions is raised that the section under which (viz. 89(2) (vii of the B.V.P. Act, 1933) the fee is contemplated to be levied does not refer to fees, that it empowers a panchayat to levy "any other tax" and that unless section 89(2) is amended a fee on cart-stand cannot be levied. Under the circumstances, L.D. is, requested to state whether an amendment of the Act is necessary.

3. The Commissioner N.D's construction of the word "tax" in Sec. 89(2) is narrow. It is true that the word "tax" is not a word of invariable signification. It is not infrequently used to denote a particular species of imposition. The word, However, must be looked at in relation to its surroundings, it must be considered with respect to the object of the clause in which it stands, and the results which would flow from one construction or the other. In short, its meaning, must like any other word not of

invariable signification found in a document, be ascertained by interpreting it in the light of the whole instrument,. Considered thus it will be found that the word "tax" is defined in sub-section (14) of Section 3 of the B.V.P. Act, 1933 as " a tax, cess, rate or other impost leviable under this Act" In view of this definition the word tax is of sufficiently ample meaning to include a "fee".

The wording of sub-section (2) of Section 89 of the Act is also conducive to this interpretation. The said sub-section lays down that "It shall be competent to a Panchayat to levy all or any of the following taxes or fees and then enumerates the different taxes.

clause (vii) of sub-sec (2) of sec 89 will have to be read in ref to List II of the G.O.I. Act which provides for separate entries for 'Tax' and 'Fee'

It is, therefore, not necessary to amend the Act as suggested by the Commissioner N.D.

J.S. (Mr. P)

The Commissioner N.D. at page 21 ante has raised the question namely, whether a cart-stand fee can be levied, without suitably amending section 89 of the V.P. Act, 1933. He holds a view that section 89 will have to be amended.

In Section 89(2) the words "taxes or fees " are used but they are qualified with the words "any of the following" meaning thereby taxes or fees mentioned in clauses (i) to (vii) of Sub-section (2). It has to be seen whether clause (vii) help us in any way. Clause (vii) refers to a tax which the Provincial Legislature has under the Government of India Act, 1935, power to impose. So the term 'tax' used in clause (vii) has to be read in reference to List II of the Goverement of India Act, 1935. In List II entries relating to taxes and entries relating to fees are separately from and independently each other and this leads to refer that the term "tax" used in List II is not so comprehensive or wide as to include "fee". It appears, therefore, that the words" Any other tax" used in clause (vii) of Section 89 (2) does not include a fee.

S.A.S.

The Secy., H.&.L.S.D. inquiries whether in view of the Commr., S.D. opinion at p. 21 ante concurred in by the Commr., N.D. it is necessary to amend the Bombay Village Panchayats Act, 1933.

2. The view taken by the Commr., S.D. and concurred in by the Commr., N.D. that the words"or fees" would require to be inserted in sub. 89(2) (vii) of the Bombay Village Panchayats Act, 1933, in order to enable a Village Panchayats Act, to levy and recover fees on cart-stands is entirely wrong. In clause (vii) of sub-sec. (2) of sec.89 o the Act, the words used are "any other tax x x x which the Provincial Legislature has under the Govt. of India Act, 1935, power to impose in the Province. The word 'tax' as defined in the Bombay Village Panchayats Act includes all kinds of imports including fees. It is in this sence the word has been used in Section 89 (2) (vii) of the said act.

If the above ~~set~~ note is approved as a reply in word "my" may be substituted for me the words substituted in underlined in pencil

Additional Secretary.

VDP.

7-6-56.

Legal Department.

The view taken by the Commissioner, Southern Division, and concurred in by the Commissioner, Northern Division, that the words "or fees" would require to be inserted in section 39 (2) (vii) of the Bombay Village Panchayats Act, 1933, inorder to enable a Village Panchayat to levy and recover on cart-stands is entirely wrong. In clause (vii) of sub-section (2) of section 39 of the Act, the words used are "any other tax which ~~is~~ the Provincial Legislature has, under the Government of India Act, 1935, power to impose in the Provinces." The word 'tax' as defined in the Bombay Village Panchayats Act includes all kinds of imposts including fees. It is in this sense the word has been used in section 39(2) (vii) of the said Act. As the impost is covered by the word "tax" section 39(2)(vii) of the Bombay Village Panchayat Act, which is the relevant clause under consideration needs no amendment.

S.D. J.R. Dhurandhar.
6/12

O.O.
Additional Secretary to Government.

U.R. to H.& L.G.D. No. 14243 dated the 7th December 1945.

VGP.
7-6-56.

R.L.No. 18224/
Dated 8th November 1949.

Submitted with reference to H.& L.G.D. note at page 30 ante.

2. The draft Rules at pp. 23-27 regarding watch and Ward proposed to be issued by H.& L.G.D. under Section 108 sub-section (1) clause (d1) of the Bombay Village Panchayat Act, 1933 have been sent to L.D. for scrutinity. It is further proposed by H.& L.G.D. to amend Section 10 of the Cattle trespass Act, 1871 with a view to enablign watchman appointed by Panchayats to seize cattle trespassing on lands which such village watchman have been appointed to guard.

3. The draft Rules as amended are in order. A clean copy of the Rules as amended is also appended herewith.

4. The words 'costs of ' have been added in Rule 1 as the rule-making power of Government under Section 108 sub-section (1) Clause (d1) has been restricted to the prescribing of persons from whom and the manner in which the costs of watch and ward under Clause (5) of Section 56A are to be levied and recovered.

5. Rules 3,4,5, and 6 in the draft Rules received from H.& L.G.D. have been deleted as the prescribing of numbers pay-scale, duties etc. of the rule-making power of Government under the aforesaid Section.

6. The portion relating to 'rates' in rule 7 of the draft Rules has been deleted as Government has not been given power to prescribe such rates under Section 108 of the Act.

7. The Schedule has also been deleted for the same reason as stated in para 6 above.

8. As regards the proposal to amend Section 10 of the Cattle-trespassAct, 1901, it seems to be proper.. A draft Bill to make the necessary amendment is a appended herewith.

S.D.
23/12

2. A revised draft notification is sent herewith subject to the following observations:-

(1) Section 26A of the Bombay Village Panchayat Act makes it competent for a Panchayat to make provision for a watch and ward of the village and the crop therein. Section 108(1) (dl) of the Act empowers the Government to make rules under section 25A prescribing persons in a village from whom and the manner in which the costs of watch and ward under clause(s) of sub-section (1) of section 26A shall be levied and recovered. It is clear from this provisinn that the rule, making power is restricted to prescribing :-

(i) the persons in the village from when the costs shall be levied and recovered, and

(ii) the manner in which the costs shall be levied and recovered.

Rules 4,5, and 6 relate to the appointment of a watch and ward by the Panchayat, the duties to be performed by him and the condition of his service. They therefore, fall outside the scope of the power given to the Government under section 108(1)(dl) of the Act. The Panchayat however may provide for such matter under section 35 read with section 34, and 36.

In view of the provision contained in draft rule 9 for the recovery of any sum from a person other than a person primarily liable, it is necessary to add a provision on the lines of the second proviso in rule 13of the Rules made under section 89(2) (i) now superceded.

5. The rules require previous publi cation under sub-section (2) of section 108 of the Act and the rules so made will have to be laid before each of the Chambers of the Provincial Legislature as required by sub-section (3) thereof.

6. The draft of the Bill amending section 10 of the Cattle Trespass Act, 1871(I of 1871) as required by H.&.L.C.D. is sent herewith. The orders of the Government however will have to be obtained on the proposal legislation. The subject matter falls under entry 18 of Sec II of the Seventh Schedule to the Constitution of India.

S.D. 24/12

Additional Secretary.

VGP.
7-6-55.

Legal Department.

A revised draft notification is sent herewith subject to the following observations:-

(1) Section 26A of the Bombay Village Panchayat Act makes it competent for a panchayat to make provisions for a watch and ward of the village and the crop therein. Section 108(1)(di) of the Act empowers the Government to make rules under section 26A prescribing persons in a village from whom and the manner in which the costs of watch and ward under clause (a) of sub-section (1) of section 26A shall be levied and recovered. It is clear from this provision that the rule making power is restricted to prescribing:-

(i) the persons in the village from whom the costs shall be levied and recovered, and

(ii) the manner in which the costs shall be levied and recovered.

Rules 4,5,and 6 relate to the appointment of a watch and ward by the Panchayat, the duties of a performed by him and the condition of his service. They, therefore, fall outside the scope of the power given to the Government under section 108(1)(di) of the Act,. The Panchayat, however,may provide for such matter under section 35 read with sections 34 and 36.

In view of the provision contained in draft rule 9 for the recovery of any sum from a person other than a person primarily liable, it is necessary to add a provision on the lines of the second proviso in rule 13 of the Rules made under section 99(2) (i) now superceded.

Section 26A(1) and section 108(1)(di) of the Bombay Village Panchayats Act authorise the making of rules for the recovery of the cost for watch

and ward from persons and not on houses and lands. The impost is really a levy of a fee and not a tax. Although the word 'tax' as defined in the Bombay Village Panchayats Act includes all kinds of imposts, section 89 of the Act refers to taxes and fees separately and the proportion of costs recorded is really a fee for services rendered and not a tax in the strict sense of the term. It is true that section 89 is not clearly worded, but it will be proper to describe the impost as a fee rather than a tax. There is no objection to prescribe the rate of such fee as proposed by the Health and Local Government Department in rule 7 and the Schedule.

The rules require previous publications under sub-section (2) of section 108 of the Act and the rules so made will have to be laid down before each of the Chambers of the Provincial Legislature as required by sub-section (3) thereof.

The draft of the Bill amending section 10 of the Cattle-Trespass Act, 1871 (I of 1871) as required by the Health and Local Government Department is sent herewith. The orders of the Government however, will have to be obtained on the proposed legislation. The subject matter falls entry 16 or List II of the Seventh Schedule to the Constitution of India.

S.D. J.R. Dhurandhar.
28/12

e.e.

Additional Secretary to Government.

U.R. to H.& L.G.D. No. 13244, dated the 29th December 1949.

VOP.

7-6-50.